

1 XAVIER BECERRA  
2 Attorney General of California  
3 DAVID A. ZONANA, State Bar No. 196029  
Supervising Deputy Attorney General  
4 GEORGE TORGUN, State Bar No. 222085  
SHANNON CLARK, State Bar No. 316409  
CONNIE P. SUNG, State Bar No. 304242  
Deputy Attorneys General  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
6 Oakland, CA 94612-0550  
Telephone: (510) 879-1974  
7 Fax: (510) 622-2270  
E-mail: George.Torgun@doj.ca.gov

8 *Attorneys for Plaintiff State of California*

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12  
13 **STATE OF CALIFORNIA, by and through**  
**XAVIER BECERRA, ATTORNEY**  
**GENERAL, and the CALIFORNIA AIR**  
**RESOURCES BOARD; and STATE OF**  
**NEW MEXICO, by and through HECTOR**  
**BALDERAS, ATTORNEY GENERAL,**

14 Plaintiffs,

15 v.

16  
17 **RYAN ZINKE**, Secretary of the Interior;  
**JOSEPH R. BALASH**, Assistant Secretary for  
Land and Minerals Management, United States  
Department of the Interior; **UNITED STATES**  
**BUREAU OF LAND MANAGEMENT**; and  
**UNITED STATES DEPARTMENT OF**  
**THE INTERIOR**,

18  
19 Defendants.

20 Case No. 4:18-cv-05712-YGR

21 Consolidated with No. 4:18-cv-05984-YGR

22 **JOINT CASE MANAGEMENT**  
**STATEMENT; [PROPOSED] ORDER**

23 Case Management Conf.: Jan. 7, 2019

24 Time: 2:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers

Courtroom 1, 4th Floor,  
1301 Clay Street, Oakland, CA 94612

25 The parties to the above-entitled actions submit this Joint Case Management Statement  
26 and [Proposed] Order pursuant to the Standing Order for All Judges of the Northern District of  
27 California dated November 1, 2018, Judge Gonzalez Rogers' Standing Order In Civil Cases dated  
28 February 24, 2017, and Civil Local Rule 16-9. Undersigned counsel for Plaintiffs, Defendants,

1 and Intervenor-Defendants have discussed the items enumerated in the Court's Standing Orders  
 2 and respectfully submit the following joint statement.

3       1. Jurisdiction and Service

4       This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction),  
 5 and 5 U.S.C. § 702 (Administrative Procedure Act ("APA")). All parties have been served.

6       2. Facts

7       On September 28, 2018, Defendant U.S. Bureau of Land Management ("BLM") revised  
 8 in part and rescinded in part a regulation it had adopted in November 2016 to address the waste of  
 9 natural gas from new and existing oil and gas operations on federal and Indian lands, and to  
 10 clarify when gas lost through venting, flaring, or leaks is subject to royalties. 83 Fed. Reg. 48,194  
 11 (Sept. 28, 2018) (the "Revision/Repeal Rule"). On September 18, 2018, State Plaintiffs filed this  
 12 litigation challenging the Revision/Repeal Rule. Case No. 4:18-cv-05712. On September 28,  
 13 2018, Conservation and Tribal Citizen Group Plaintiffs filed a related case. Case No. 4:18-cv-  
 14 05984. The Court has consolidated these cases. Case No. 4:18-cv-05712, ECF No. 45; Case No.  
 15 4:18-cv-05984, ECF No. 51.

16       The Western Energy Alliance ("the Alliance") and Independent Petroleum Association of  
 17 America ("IPAA") and the State of Wyoming ("Wyoming") have intervened as Defendants in  
 18 these cases. On December 12, 2018, the American Petroleum Institute ("API") moved to  
 19 intervene. These parties may be collectively referred to as "Intervenor-Defendants."

20       3. Legal Issues

21       Plaintiffs allege that, in promulgating the Revision/Repeal Rule, Defendants violated: (1)  
 22 the Mineral Leasing Act, 30 U.S.C. §§ 187, 225; (2) the Federal Land Policy Management Act  
 23 ("FLPMA"), 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b); (3) the National Environmental Policy  
 24 Act ("NEPA"), 42 U.S.C. § 4332(C); and (4) the APA, 5 U.S.C. §§ 553, 706(2)(A), (C).

25       Defendants and Intervenor-Defendants dispute these claims.

26

27

28

1           4.     Motions

2           The Court granted the Conservation and Tribal Citizen Group Plaintiffs' stipulation to  
3 consolidate and the Alliance and IPAA's and Wyoming's motions to intervene. API's motion to  
4 intervene is pending.

5           Because this case is governed by the APA, the parties anticipate resolving this matter  
6 through summary judgment motions after the preparation of an administrative record.  
7 Accordingly, the parties proposed to depart from the Court's Standing Order in Civil Cases in the  
8 following ways. *See* Judge Gonzalez Rogers' Standing Order in Civil Cases #9 (Motions for  
9 Summary Judgment). First, pursuant to Section 6 of the Court's Standing Order, the parties are  
10 fully prepared to attend the scheduled case management conference through counsel with  
11 authority to enter into stipulations and make admissions, and to address all relevant issues in this  
12 Court's standing order and local rules. However, the parties do not believe that a case  
13 management conference or pre-filing conference for the summary judgment motions are  
14 necessary in this case should the Court adopt the schedule proposed in paragraph 17 below. If the  
15 Court wishes to hold a case management conference or pre-filing conference, the parties propose  
16 that the Court combine them into a single conference. Second, because of the number and  
17 complexity of the claims, the parties propose to exceed the page limits and timing for summary  
18 judgment motions. Third, because the undisputed facts will be contained in the administrative  
19 record, the parties propose to each provide a statement of facts with citations to the administrative  
20 record as part of their motion or cross-motion for summary judgment rather than providing  
21 separate supporting and responsive statements of facts. Finally, the parties seek to file more than  
22 one motion and cross-motion for summary judgment per side because there are multiple parties  
23 with distinct interests on each side. *See* Order Granting Stipulation to Consolidate Cases, ECF  
24 No. 45 ("Consolidation does not require any party to file joint briefs, or impact the rights of any  
25 party to file separate pleadings."). The parties' proposed schedule for production of the  
26 administrative record and briefing summary judgment is set forth in paragraph 17 below.

27

28

1       5. Amendment of Pleadings

2           The parties do not currently anticipate any further amendment of the pleadings. The  
3 parties propose that any such motions, if filed, would toll the summary judgment briefing  
4 deadlines until the motions to amend are resolved.

5       6. Evidence Preservation

6           The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
7 Stored Information (“ESI Guidelines”), and have met and conferred pursuant to Fed. R. Civ. P.  
8 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the  
9 issues reasonably evident in these actions. *See* ESI Guidelines 2.01 and 2.02, and Checklist for  
10 ESI Meet and Confer. In this matter, such preservation is limited to that necessary to prepare and  
11 submit the administrative record.

12       7. Disclosures

13           The parties anticipate that these actions will be resolved based on the undisputed facts  
14 contained in the administrative record for the Revision/Repeal Rule. Evidentiary disclosures are  
15 not required in record review cases, and none are anticipated. Fed. R. Civ. P. 26(a)(1)(B)(i).

16       8. Discovery

17           The parties anticipate that these actions will be resolved based on the undisputed facts  
18 contained in the administrative record for the Revision/Repeal Rule and that discovery will not be  
19 necessary.

20       9. Class Actions

21           These cases are not a class action.

22       10. Related Cases

23           The court has consolidated Case Nos. 4:18-cv-05712-YGR and 4:18-cv-05984-YGR. The  
24 parties are aware of no additional related cases pending before another judge of this Court, or  
25 before another court or administrative body.

26       11. Relief

27           Plaintiffs seek: (a) a declaratory judgment that Defendants acted arbitrarily, capriciously,  
28 contrary to law, and in excess of statutory authority, in promulgating the Revision/Repeal Rule;

1 (b) an order setting aside and vacating the Revision/Repeal Rule; (c) an award of Plaintiffs' costs,  
 2 expenses, and reasonable attorney fees; and (d) such other relief as the Court deems just and  
 3 proper. Defendants and Intervenor-Defendants oppose the relief sought and request that the  
 4 actions be dismissed with prejudice.

5 **12. Settlement and ADR**

6 The parties have complied with ADR L.R. 3-5 and have filed ADR certifications with the  
 7 Court. The parties do not believe that settlement or ADR would be productive at this time.

8 **13. Consent to Magistrate Judge for All Purposes**

9 Defendants have declined to consent to have a magistrate judge conduct all further  
 10 proceedings including trial and entry of judgment.

11 **14. Other References**

12 The parties do not believe that these cases are suitable for reference to binding arbitration,  
 13 special master, or the Judicial Panel on Multidistrict Litigation.

14 **15. Narrowing of Issues**

15 The parties do not believe that it is possible to narrow the issues at this time.

16 **16. Expedited Trial Procedure**

17 Because judicial review in these cases is based on an administrative record, they should be  
 18 decided on summary judgment and no trial is expected to occur. The parties do not request an  
 19 expedited summary judgment schedule.

20 **17. Scheduling**

21 The parties respectfully propose the schedule below for certifying the administrative  
 22 record and briefing cross-motions for summary judgment:

Deadline	Action
February 15, 2019	Defendants lodge the administrative record for the Revision/Repeal Rule with the Court, and serve on the parties for review.
30 days from AR filing	Deadline for parties to confer on administrative record disputes.
60 days from AR filing	Any motions challenging the completeness of the administrative record or for leave to supplement the record. (The filing of such a motion shall toll the merits briefing

	schedule).
90 days from AR filing or 60 days after any and all administrative record-related motions are fully resolved, whichever comes last	Plaintiffs' Motions for Summary Judgment. Plaintiffs' motions will not exceed 40 pages each for the State Plaintiffs and Conservation and Tribal Citizen Group Plaintiffs.
60 days after Plaintiffs file their Motions for Summary Judgment	Federal Defendants' Combined Opposition to Motions for Summary Judgment and Cross-Motion for Summary Judgment. Federal Defendants shall file one brief, which will not exceed 60 pages.
14 days after Federal Defendants' Combined Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motions for Summary Judgment	Intervenor-Defendants' Combined Oppositions to Motions for Summary Judgment and Cross-Motions for Summary Judgment. The Alliance, IPAA, and API's briefs will not exceed 40 pages total, to divide as they mutually agree. Wyoming's brief will not exceed 25 pages.
30 days after Intervenor-Defendants file their Combined Oppositions to Motions for Summary Judgment and Cross-Motions for Summary Judgment	Plaintiffs' Combined Replies in Support of Motions for Summary Judgment and Oppositions to Cross-Motions for Summary Judgment. Plaintiffs' replies and oppositions will not exceed 45 pages each for the State Plaintiffs and Conservation and Tribal Citizen Group Plaintiffs.
45 days after Plaintiffs file their Combined Replies in Support of Motions for Summary Judgment and Oppositions to Cross-Motions for Summary Judgment	Federal Defendants' Replies in Support of Cross-Motion for Summary Judgment. Federal Defendants shall file one brief, which will not exceed 50 pages.
14 days after Federal Defendants' Reply in Support of Cross-Motion for Summary Judgment	Intervenor-Defendants' Replies in Support of Cross-Motions for Summary Judgment. The Alliance's, IPAA, and API's briefs will not exceed 30 pages total, to divide as they mutually agree. Wyoming's brief will not exceed 15 pages.
Earliest available date no sooner than 30 days after summary judgment briefing completed	Hearing on Motions for Summary Judgment

The parties reserve the right to request or oppose modifications to the page limitations and briefing deadlines above.

1       18. Trial

2           A trial is not anticipated in these record review cases. The parties anticipate that the  
3 summary judgment hearing will require approximately two hours.

4       19. Disclosure of Non-party Interested Entities or Persons

5           Conservation and Tribal Citizen Group Plaintiffs and Intervenor-Defendants have certified  
6 that there are no non-party interested entities or persons to be reported pursuant to Local Rule 3-  
7 15. Local Rule 3-15 does not apply to any governmental entity or its agencies, including State  
8 Plaintiffs and Defendants.

9       20. Professional Conduct

10           All attorneys of record for the parties have reviewed the Guidelines for Professional  
11 Conduct for the Northern District of California.

12       21. Other

13           The parties are not aware of any other matters that may facilitate the just, speedy, and  
14 inexpensive resolution of this matter.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Dated: December 31, 2018 Respectfully submitted,

2 XAVIER BECERRA  
3 Attorney General of California  
4 DAVID A. ZONANA  
Supervising Deputy Attorney General

5 /s/ George Torgun  
6 GEORGE TORGUN  
7 SHANNON CLARK  
CONNIE P. SUNG  
Deputy Attorneys General

8  
9 *Attorneys for Plaintiff State of California, by and through Xavier  
Becerra, Attorney General, and the California Air Resources Board*

10 HECTOR BALDERAS  
11 Attorney General of New Mexico

12 /s/ Ari Biernoff  
13 ARI BIERNOFF  
14 BILL GRANTHAM  
Assistant Attorneys General

15 *Attorneys for Plaintiff State of New Mexico, by and through Hector  
Balderas, Attorney General*

16 /s/ Stacey Geis  
17 Stacey Geis, CA Bar # 181444  
18 Earthjustice  
50 California St., Suite 500,  
19 San Francisco, CA 94111-4608  
Phone: (415) 217-2000  
20 Fax: (415) 217-2040  
21 sgeis@earthjustice.org

22 Robin Cooley, CO Bar # 31168 (*admitted pro hac vice*)  
23 Joel Minor, CO Bar # 47822 (*admitted pro hac vice*)  
Earthjustice  
24 633 17<sup>th</sup> Street, Suite 1600  
Denver, CO 80202  
25 Phone: (303) 623-9466  
rcooley@earthjustice.org  
jminor@earthjustice.org

26  
27 *Attorneys for Plaintiffs Sierra Club, Fort Berthold Protectors of  
Water and Earth Rights, The Wilderness Society, and Western  
Organization of Resource Councils*

1 Susannah L. Weaver, DC Bar # 1023021 (*admitted pro hac vice*)  
2 Donahue, Goldberg, & Weaver LLP  
3 1111 14th Street, NW, Suite 510A  
4 Washington, DC 20005  
Phone: (202) 569-3818  
susannah@donahuegoldberg.com

5 Peter Zalzal, CO Bar # 42164 (*admitted pro hac vice*)  
6 Rosalie Winn, CA Bar # 305616  
7 Environmental Defense Fund  
2060 Broadway, Suite 300  
Boulder, CO 80302  
Phone: (303) 447-7214 (Mr. Zalzal)  
Phone: (303) 447-7212 (Ms. Winn)  
pzalzal@edf.org  
rwinn@edf.org

10  
11 Tomás Carbonell, DC Bar # 989797 (*admitted pro hac vice*)  
12 Environmental Defense Fund  
13 1875 Connecticut Avenue, 6th Floor  
Washington, D.C. 20009  
Phone: (202) 572-3610  
tcarbonell@edf.org

14  
15 *Attorneys for Plaintiff Environmental Defense Fund*

16 Laura King, MT Bar # 13574 (*admitted pro hac vice*)  
17 Western Environmental Law Center  
18 103 Reeder's Alley  
Helena, MT 59601  
Phone: (406) 204-4852  
king@westernlaw.org

19  
20 Erik Schlenker-Goodrich, NM Bar # 17875 (*admitted pro hac vice*)  
21 Western Environmental Law Center  
22 208 Paseo del Pueblo Sur, #602  
Taos, NM 87571  
Phone: (575) 613-4197  
eriksg@westernlaw.org

23  
24 *Attorneys for Plaintiffs Los Padres ForestWatch, Center for  
25 Biological Diversity, Citizens for a Healthy Community, Diné  
26 Citizens Against Ruining Our Environment, Earthworks, Montana  
27 Environmental Information Center, National Wildlife Federation,  
San Juan Citizens Alliance, WildEarth Guardians, Wilderness  
Workshop, and Wyoming Outdoor Council*

1 Darin Schroeder, KY Bar # 93828 (*admitted pro hac vice*)  
2 Ann Brewster Weeks, MA Bar # 567998 (*admitted pro hac vice*)  
3 Clean Air Task Force  
4 114 State Street, 6th Floor  
5 Boston, MA 02109  
6 Phone: (617) 624-0234  
7 dschroeder@catf.us  
8 aweeks@catf.us

9  
10 *Attorneys for Plaintiff National Wildlife Federation*

11 Scott Strand, MN Bar # 0147151 (*admitted pro hac vice*)  
12 Environmental Law & Policy Center  
13 60 S. 6th Street, Suite 2800  
14 Minneapolis, MN 55402  
15 Phone: (312) 673-6500  
16 Sstrand@elpc.org

17 Rachel Granneman, IL Bar # 6312936 (*admitted pro hac vice*)  
18 Environmental Law & Policy Center  
19 35 E. Wacker Drive, Suite 1600  
20 Chicago, IL 60601  
21 Phone: (312) 673-6500  
22 rgranneman@elpc.org

23 *Attorneys for Plaintiff Environmental Law & Policy Center*

24 David Doniger, DC Bar # 305383 (*admitted pro hac vice*)  
25 Melissa Lynch, MA Bar # 689235 (*admitted pro hac vice*)  
26 Natural Resources Defense Council  
27 1152 15th St. NW, Suite 300  
28 Washington, DC 20005  
Phone: (202) 289-6868  
ddoniger@nrdc.org  
llynch@nrdc.org

10  
11 *Attorneys for Plaintiff Natural Resources Defense Council*

1 JEAN E. WILLIAMS  
2 Deputy Assistant Attorney General  
3 Environment & Natural Resources Division  
United States Department of Justice

4 */s/ Carter F. Thurman*  
5 CARTER F. THURMAN  
6 Trial Attorney, admitted to GA Bar  
U.S. Department of Justice  
7 Environment and Natural Resources Division  
Natural Resources Section  
601 D Street, NW  
8 Washington, D.C. 20044-7611  
Tel.: (202) 305-0444 / Fax: (202) 305-0506  
9 Carter.Thurman@usdoj.gov  
10 CLARE M. BORONOW, admitted to MD Bar  
999 18th Street  
11 South Terrace, Suite 370  
Denver, CO 80202  
12 Tel.: (303) 844-1362 / Fax: (303) 844-1350  
clare.boronow@usdoj.gov  
13

14 *Counsel for Defendants*

15 */s/ Michael M. Robinson*  
16 ERIK E. PETERSON (WSB 7-5608), admitted *pro hac vice*  
MICHAEL M. ROBINSON (WSB 6-2658), admitted *pro hac vice*  
17 Senior Assistant Attorneys General  
2320 Capitol Avenue  
18 Cheyenne, WY 82002  
Telephone: (307) 777-6946  
19 Facsimile: (307) 777-3542  
[erik.petersen@wyo.gov](mailto:erik.petersen@wyo.gov)  
[mike.robinson@wyo.gov](mailto:mike.robinson@wyo.gov)  
20

21 CHRISTIAN L. MARSH (SBN 209442)  
22 CHRISTOPHER RENDALL-JACKSON (SBN 288933)  
DONALD E. SOBELMAN (SBN 184028)  
23 DOWNEY BRAND LLP  
455 Market Street, Suite 1500  
24 San Francisco, Ca 94105  
Telephone: (415) 848-4800  
25 Facsimile: (415) 848-4801  
[cmarsh@downeybrand.com](mailto:cmarsh@downeybrand.com)  
[crendall-jackson@downeybrand.com](mailto:crendall-jackson@downeybrand.com)  
[dsobelman@downeybrand.com](mailto:dsobelman@downeybrand.com)  
26  
27

28 *Counsel for Intervenor-Defendant State of Wyoming*

1 By: /s/ Eric P. Waeckerlin  
2 Eric P. Waeckerlin  
3 HOLLAND & HART LLP  
4 555 17th Street, Suite 3200  
5 Denver, Colorado 80202  
6 Tel: 303.295.8086  
7 Fax: 303.975.5396  
8 epwaeckerlin@hollandhart.com  
9 Admitted *Pro Hac Vice*

10 Kathleen C. Schroder  
11 DAVIS GRAHAM&STUBBS LLP  
12 1550 17th Street, Suite 500  
13 Denver, Colorado 80202  
14 Tel: 303.892.9400  
15 Fax: 303.893.1379  
16 [Katie.Schroder@dgslaw.com](mailto:Katie.Schroder@dgslaw.com)  
17 Admitted *Pro Hac Vice*

18 *Attorneys for Intervenors Western Energy Alliance and The  
19 Independent Petroleum Association of America*

20 /s/ Gary J. Smith \_\_\_\_\_  
21 Gary J. Smith (SBN 141393)  
22 BEVERIDGE & DIAMOND, P.C.  
23 456 Montgomery Street, Suite 1800  
24 San Francisco, CA 94104-1251  
25 Telephone: (415) 262-4000  
26 Facsimile: (415) 262-4040  
27 gsmith@bdlaw.com

28 Peter J. Schaumberg, pro hac vice  
Peter J. Schaumberg, pro hac vice  
James M. Auslander, pro hac vice  
James M. Auslander, pro hac vice  
John G. Cossa, pro hac vice  
John G. Cossa, pro hac vice  
BEVERIDGE & DIAMOND, P.C.  
BEVERIDGE & DIAMOND, P.C.  
1350 I St., N.W., Suite 700  
1350 I St., N.W., Suite 700  
Washington, DC 20005  
Washington, DC 20005  
Phone: (202) 789-6009  
Phone: (202) 789-6009  
pschaumberg@bdlaw.com  
pschaumberg@bdlaw.com  
jauslander@bdlaw.com  
jauslander@bdlaw.com  
[jauslander@bdlaw.com](mailto:jauslander@bdlaw.com)  
[jauslander@bdlaw.com](mailto:jauslander@bdlaw.com)  
[jcossa@bdlaw.com](mailto:jcossa@bdlaw.com)  
[jcossa@bdlaw.com](mailto:jcossa@bdlaw.com)

29 *Attorneys for Proposed Intervenor*  
30 *American Petroleum Institute*

